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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission

DOCKETED

JUL 1 4 2004

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IN THE MATTER OF:

MOUNTAIN TELECOMMUNICATIONS, INC.,
Complainant

vs.

QWEST CORPORATION,
Respondent

DOCKET NO. T-01051b-03-0092

AZ CORP COMMISSION
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CONDITIONAL MOTION TO DISMISS

In response to the Procedural Order issued June 28, 2004 in this proceeding by Assistant Chief Administrative Law Judge Dwight D. Nodes, Mountain Telecommunications, Inc. ("MTI") hereby moves to dismiss without prejudice its complaint filed in this proceeding, subject to the following explanation and condition.

On February 13, 2003, MTI filed with the Commission a complaint against Qwest Corporation in which it alleged that the rates which Qwest was charging MTI for unbundled dedicated transport in purported compliance with the Commission's Decision No. 64922 were unlawful. As noted in the Procedural Order, the Commission elected to consider MTI's transport pricing allegations in a separate proceeding conducted as part of its ongoing Qwest wholesale rate pricing proceeding (Docket No. T-00000A-00-0194). By Decision No. 66385 issued October 6, 2003, the Commission agreed with MTI's contentions on transport pricing and

ordered Qwest to adjust the rates for dedicated transport to those in effect prior to Decision 64922, and to make those adjustments effective as of June 12, 2002 – the effective date of Decision 64922.

Since the relief sought by MTI in its complaint was awarded by the Commission in the October 6, 2003 order in Docket No. T-00000A-00-0194, MTI agrees with the Assistant Chief Administrative Law Judge that there is no need for MTI's complaint to remain pending. However, Qwest has made clear that it does not agree with the Commission's October 6, 2003 order and has appealed that order by filing a complaint with the United States District Court for the District of Arizona.¹ At this time, Qwest's complaint to the U.S. District Court remains pending with briefing scheduled for later this year.


MTI believes that the Commission's October 6, 2003 order was decided correctly and is fully supported by the record. Nonetheless, so long as Qwest's appeal remains pending, there is a risk that the Commission's decision could be overturned or that the matter could be remanded to the Commission. For that reason, MTI has deemed it necessary to intervene in Qwest v. Arizona Corporation Commission. In the unlikely event that Qwest prevails in its appeal of the October 6, 2003 order, then MTI might find it necessary to pursue its complaint. Accordingly, MTI hereby moves the Commission to dismiss the above-captioned complaint, provided that such dismissal is without prejudice to refiling the complaint if the Commission's October 6, 2003 order is reversed by the U.S. District Court. To the extent necessary, MTI expects that any applicable limitation of action provisions would be tolled for the period between the filing of its complaint and a court decision overturning the Commission's October 6, 2003 order, and that

¹ Qwest Corporation v. Arizona Corporation Commission, et al, No. CV 03-2462 PHX FJM.

any such refiled complaint would relate back to the initial complaint filing date – February 13, 2003.²

Respectfully submitted,

MOUNTAIN TELECOMMUNICATIONS, INC.



Mitchell F. Brecher

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Its Attorneys

July 14, 2004

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² The Procedural Order states that MTI's complaint was filed February 13, 2004. In fact, the complaint was filed February 13, 2003.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **Conditional Motion to Dismiss** on all parties of record in this proceeding by a copy thereof:

ORIGINAL + 13 COPIES of the foregoing
served via **Overnight Mail** and filed
this 14th day of July, 2004, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007


COPY of the foregoing served via **Overnight Mail**
this 14th day of July, 2004 to:

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